United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

333

No. 17,280

HENRY L. JONES, Appellant

v.

UNITED STATES OF AMERICA, Appellee

On appeal from the United States District Court for the District of Columbia

JAMES C. CAWOOD, Jr.
Attorney for Appellant
(Appointed by the District Court)
2412 Minnesota Avenue, S. E.
Washington 20, D. C.

QUESTION PRESENTED

The question is whether a conviction for unauthorized use and interstate transportation of stolen vehicles should be reversed when there was no sufficient evidence on the element of scienter which would tend to corroborate the confessions and admissions of defendant, other than the facts which constitute the other elements of the crime.

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In the United States Court of Appeals

For the District of Columbia Circuit

No. 17,280

Henry L. Jones, Appellant

v.

United States of America, Appellee

On Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

This case was tried in the District Court for the District of Columbia. Sentence was imposed on June 8, 1962 (J.A. 30), and appellant's application to proceed on appeal without prepayment of costs was granted by the District Court on June 18, 1962 (J.A. 31). This court has jurisdiction under the Act of June 28, 1948, c. 646, 62 Stat. 929, 28 U.S.C. 1291.

STATEMENT OF THE CASE

Appellant was arrested on March 8, 1962, in Prince George's County, Maryland, and indicted in the District of Columbia on two counts (Counts One and Three) of violating 22 D.C.Code 2204, relating to the unauthorized use of a vehicle, and two counts (Counts Two and Four) of violating 18 U.S.C. 2312, relating to the interstate

transportation of a stolen vehicle. (J.A. /).

The first two counts of the indictment involve a 1961 Brown Chevrolet automobile, the property of National Truck Rental Co., Inc., taken from the custody of William G. Barr and Jack Shires on February 19, 1962. In count one, appellant is charged with operating this automobile from February 19 to March 4, 1962, without the consent of the owners or custodians thereof. In the second count, he is charged with interstate transportation of this vehicle from Washington, D. C. to Prince George's County, Md., on March 4, 1962.

The third and fourth counts of the indictment deal with a 1961 White Chevrolet automobile, the property of Chiang C. Lin, taken from the custody of Humberto Fernadez on March 5, 1962. Count three charges appellant with operating this vehicle from March 5 to March 8, 1962, without the consent of the owner or custodian thereof. Appellant is charged in count four with the interstate transportation of this vehicle from Washington, D. C. to Prince George's County, Md., on March 8, 1962. It was proven beyond doubt that the automobiles in question belonged to the persons named in the indictment, and were used without their consent, although there was no evidence produced at trial that anyone was seen taking these cars, or that any person could be connected with the taking.

Miss Barbara Stewart, a friend of appellant's, and Harry Anderson, a frequent companion, both testified that appellant did drive and ride in both vehicles (J.A. 9, 11, 14, 16); this was never denied and was in fact corroborated by appellant's own witnesses. However,

no witness testified that appellant ever drove the cars by himself, or parked them near his home, or in any other way took possession of them except to drive them.

On March 8, 1962, the White Chevrolet, with appellant driving and Mr. Anderson as passenger, was disabled by a dead battery near Miss Stewart's home in Mitchellville, Md. Officer Switzer of the Prince George's County Police was called in to investigate the occurence, found the automobile was stolen, and took appellant and Mr. Anderson into custody (J.A. 18). Anderson was subsequently freed (J.A. 19).

A set of luggage, belonging to Mr. Barr, was taken in the Brown automobile (J.A. 4) and recovered in the White automobile (J.A. 22-23). Miss Stewart had previously noted the presence in the automobile of Mr. Barr's luggage. Appellant replied, according to her testimony, that the dealer who sold him the car could not find the lady that sold it to him and so gave the suitcase away (J.A. 15)

The contested element of the crimes charged is that of intent knowledge on the part of appellant that the automobiles were in fact stolen. With regard to the Brown Chevrolet, Miss Stewart testified that appellant drove in this automobile and stated that he was buying it from Ourisman-Mandell at $45.00 a month (J.A. 14-16). Anderson likewise stated that appellant claimed he was purchasing the car from Ourisman-Mandell at such terms. He added that appellant frequently drove him around in the automobile (J.A. 9-12).

Miss Stewart, testifying concerning the White Chevrolet, related that appellant told her the automobile was being loaned to

him by the insurance company until his own was fixed (J.A. 16). Anderson's testimony was the same (J.A. 11).

Further testimony as to admissions about this automobile were obtained from its owner, Chiang O. Lin, Officer Switzer, and District of Columbia Police Officer Delmar Reid. According to Lin, appellant told him at arraignment that he was "sorry" (J.A. 7). Switzer testified that appellant claimed ownership of the automobile when it was found disabled (J.A. 14).

Officer Reid brought appellant back from Prince George's County to the District of Columbia Auto Squad office. He there confronted appellant with Anderson's story that appellant had used both automobiles, whereupon appellant stated that the story was true, and that he (appellant) had taken the automobiles (J.A. 20-21).

Appellant was tried in the United States District Court for the District of Columbia before a jury, Pine, J., presiding. A motion for acquittal at the close of the testimony that no evidence was presented which would sufficiently corroborate his confession and admissions of guilt was denied (J.A. 23). Appellant was found innocent on the first count (unauthorized use of the Brown Chevrolet) and guilty on Counts Two, Three and Four. On June 8, 1962, he was sentenced to 1-3 years on Counts Two and Three and 1-4 years on Count Four, sentences to run concurrently (J.A. 30). Appellant's application to proceed on appeal without prepayment of costs was granted by the District Court on June 18, 1962 (J.A. 31).

STATUTES INVOLVED

Act of June 25, 1948, c. 645, 62 Stat. 806, U.S.C. 18§2312, provides as follows:

> Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned for not more than five years, or both.

Act of February 3, 1913, c. 23§826b, 37 Stat. 656, District of Columbia Code 22§2204 provides as follows:

> Any person who, without the consent of the owner, shall take, use, operate, or remove, or cause to be taken, used, operated, or removed from a garage, stable, or other building, or from any place or locality on a public or private highway, park, parkway, street, lot, field, inclosure, or space, an automobile or motor vehicle, and operate or drive or cause the same to be operated or driven for his own profit, use, or purpose shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding five years, or both such fine and imprisonment.

STATEMENT OF POINTS

The convictions on all three counts should be reversed because there was no sufficient evidence on the element of knowledge or scienter that the automobiles involved were stolen, a necessary element for a finding of guilty, which would tend to corroborate confessions or admissions made by appellant, nor was this element

supplied in any other way.

SUMMARY OF ARGUMENT

The confessions and admissions of a defendant in a criminal case must be corroborated. There must be substantial evidence which tends to establish each and every element of the corpus delicti. This evidence cannot be merely the evidence establishing the other elements of the crime, unless there is a presumption to that effect, which presumption has been waived here. In this case the testimony introduced as corroborative evidence has no tendency at all to show scienter, a necessary element of the crimes of unauthorized use of a vehicle and interstate transportation of a stolen vehicle.

ARGUMENT

This appeal discusses the extent of the corroboration of confessions and admissions required to convict a defendant in a criminal case.

No question can be raised at this juncture that confessions of an accused must be corroborated to be the basis of a conviction. Involuntary confessions caused by third degree methods, psychotic self-denunciations, and a desire to prohibit convictions based on hearsay alone (albeit admissible hearsay) have all contributed to this salutary rule. Like a confession, any admission of the accused which tends to show guilt must be corroborated. Cf. Opper v. United States, 348 U.S. 84.

Unclear, however, is the extent to which this corroboration must conform. Surely every element of the corpus delicti must in some way be accounted for, either by proof, presumption, confession or otherwise. This court first had opportunity to decide this question in Forte v. United States, 68 App. D.C. 111, 94 F2d 236, 127 A.L.R. 1120, bill of exceptions sustained on other grounds, 302 U.S. 220. Forte was arrested in Baltimore driving an automobile toward the District of Columbia and was charged with violation of the National Motor Vehicle and Theft Act. On the return to Washington in a squad car, Forte admitted that the automobile he was using was stolen, and tried to bribe the police to let him go. There was no suggestion that these statements were not voluntary.

This court, in reversing the lower court's conviction, held that scienter was a part of the corpus delicti and that there must be "independant of the confession, substantial evidence of the corpus delicti and the whole thereof (and) this evidence and the confession (must be) together convincing beyond a reasonable doubt of the commission of the crime and of defendant's connection therewith" 68 App.D.C. at 115, 94F2d at 240.

The rule was thereby established in this jurisdiction that some independant evidence had to be produced which would substantiate every element of the crime(s) charged. It was subsequently upheld in Ercoli v. United States, 76 U.S.App.D.C. 360, 131 F2d 354.

Forte was critically examined and modified in Opper v. United States, 348 U.S. 84. Opper was charged with a violation of 18 U.S.C. 2 and 281, sections which prohibit inducing employees of the United

States to receive outside compensation for any services to be rendered in any matter before a federal department or agency in which the United States is a party. The elements of this crime are two: 1) payment of money to a Government employee, and 2) rendering of services by the Government employee. Opper was charged specifically with giving approximately $2,000 to one Hollifield, who in return would recommend approval and procurement by the Department of the Air Force of certain types of goggles.

When arrested, Opper made numerous statements, all voluntary, to the FBI, acknowledging that he had given Hollifield a sum of money. Opper contended that the admissions were not corroborated within the meaning of Forte and other cases. The Supreme Court, however, modified the Forte rule as follows (348 U.S. at 93):

> However, we think the better rule to be that the corroborative evidence need not be sufficient, independent of the statements, to establish the corpus delicti. It is necessary, therefore, to require the Government to introduce substantial independent evidence which would tend to establish the corpus delicti. Thus, the independent evidence serves a dual function. It tends to make the admission reliable, thus corroborating it while also establishing independently the other necessary elements of the offense.

It was held that there was substantial independent evidence — a long distance call to Opper from Hollifield, a check from Opper, and certain airline tickets in Hollifield's name on a flight to Opper's home town — to establish the truthfulness of petitioner's admission that he paid Hollifield money. The other element of the corpus delicti, rendering of services by the Government employee, was supplied by evidence of Hollifield's efforts in gaining acceptance of petitioner's previously rejected goggles.

The key word is tendency — less than actual establishment of the elements of the crime, more than a presumption or whim. There must be "substantial independent evidence which would tend to corroborate the corpus delicti" (italics mine); it is not present here. Evidence that would tend to establish the truthfulness of appellant's confessions — that someone saw appellant steal the automobiles, that appellant was seen in the automobile alone, that he parked it at or near his home — these and all other corroborative facts are missing from the record. The supposedly corroborative testimony, e.g., that the suitcase stolen in one automobile was found in the other automobile, proves only that the same person was involved with both cars. It has no tendency to support the element of scienter.

The testimony, however ample, that appellant did drive the two automobiles without the consent of the owners, is not sufficient to supply the element of guilty knowledge. It is clear that the facts which corroborate the confession must be facts different from those which form the other elements of the crime. It should be

reiterated that, in the Opper case, the principal facts which establish the missing element were facts separate from the other elements of the crime.[1] If there is any presumption of guilt in this case arising from possession, which would supply the missing element, it has been waived by the Government, which failed to insist on such an instruction (J.A. 28-29).

Appellant has been convicted soley from his own mouth. However numerous his admissions, if he did in fact make them,[2] it violates our principles of criminal justice to let that conviction stand.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Respectfully submitted,

James C. Cawood, Jr.
Attorney for Appellant
(Appointed by the District Court)

October 1962.

1/ The facts which establish the other elements may indeed help establish other elements, but they are not alone sufficient. Opper surely does not hold that the elements alone are sufficient, since other facts are relied upon primarily.

2/ Some of the statements are so unbelievable — appellant was paying $45.00 a month for the car, he got the second car from the insurance company — as to cause serious scepticism that any one made them or anyone else believed them.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Brief upon David C. Acheson, United States Attorney for the District of Columbia, by leaving a copy in his office at the Unites States Court House, Third and Constitution Avenue, Northwest, this 29th day of October, 1962.

/s/ James C. Cawood, Jr.
James C. Cawood, Jr.
Attorney for Appellant

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17280

HENRY L. JONES, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

DAVID C. ACHESON,
United States Attorney.
FRANK Q. NEBEKER,
BARRY SIDMAN,
Assistant United States Attorneys.

QUESTION PRESENTED

Where appellant was convicted of the unauthorized use and interstate transportation of two stolen cars, and where he (a) was observed driving the cars on several different occasions; (b) could not satisfactorily explain his possession of the cars; and (c) confessed to the theft of the cars, in the opinion of appellee the following question is presented:

Was appellant's confession sufficiently corroborated?

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*Cases chiefly relied upon are marked by asterisks.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17280

HENRY L. JONES, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant was indicted in four counts for, on two separate occasions, stealing an automobile and transporting it in interstate commerce (J.A. 1–2). He pleaded not guilty, was tried by jury, and on May 2, 1962 convicted on three of the four counts (J.A. 2, 29). On June 8 he was sentenced to one to three years imprisonment on count 2 (interstate transportation), one to three years imprisonment on count 3 (unauthorized use of motor vehicle), and one to four years imprisonment on count 4 (interstate transportation), the sentences to run concurrently (J.A. 30). This appeal followed (J.A. 31).

TRIAL

Appellant was accused of the theft of (a) Mr. William Barr's car from a parking garage on February 19, 1962; and (b) Mr. Chiang C. Lin's car from a parking lot on March 5, 1962. The evidence showed that Mr. Barr's car was stolen on February 19, that appellant was thereafter observed driving the car in Mary-

land on several occasions, and that he had told friends that he was buying the car from an automobile dealer in Washington. The evidence further showed that Mr. Lin's car was stolen in Washington on March 5, that appellant was seen driving the car on that date, and on two occasions thereafter in Maryland, and that when appellant was questioned by the police he admitted stealing both the Barr and Lin cars.

Evidence as to theft of Mr. Barr's car:

William G. Barr had rented a car from the National Truck Rental Company, and on February 19, 1962 left it in the parking garage managed by Jack Shires. When Mr. Barr returned two hours later, the car, which contained much of his personal property, was gone. Mr. Barr never gave appellant, or anyone other than a parking lot attendant, permission to use his car (J.A. 3–5).

Jack Shires did not see who took Mr. Barr's car from the garage. He gave no one permission to use the car (J.A. 5–6).

Harry A. Anderson, an acquaintance of appellant, saw appellant driving Mr. Barr's car on February 19. Appellant told Anderson that the car was his, and that he was paying it off at a rate of $45 per month. Appellant drove Anderson to work two or three times in the car. On March 4, the car, driven by appellant, was in an accident in Maryland (J.A. 9–11).

Subsequently, on March 8, Anderson heard appellant say, while he was at the Auto Squad Office (appellant had just been arrested for the theft of Mr. Lin's car), that he, appellant, had stolen the car which was identified as Mr. Barr's (J.A. 13).

Barbara Stewart, a young friend of appellant, was told by him on February 19 that he "was buying the car" he was then driving (Mr. Barr's). Miss Stewart observed articles in the trunk which Mr. Barr described as his on trial. Miss Stewart also testified to the ride and accident of March 4 (J.A. 4, 14–16.)

Police Officer Delmar F. Reid, of the Metropolitan Police Auto Squad, transported appellant, who had been arrested in Maryland for the theft of Mr. Lin's car, to the District of Columbia. At the Auto Squad Office, Anderson stated in the presence of appellant that the appellant had been driving the car which was identified as Mr. Barr's. Appellant stated that

Anderson spoke the truth, and confessed to having stolen Mr. Barr's car from "a parking lot around 13th and G Streets, Northwest." (J.A. 19–21.)

Evidence as to theft of Mr. Lin's car:

Chiang C. Lin parked his car at Fernandez' parking lot, at the corner of H and 13th Streets in the District of Columbia on the morning of March 5, 1962. When he returned in the evening to pick it up, Mr. Fernandez told him that the car had been stolen. Mr. Lin had given no one permission to use his car. (J.A. 6–7.)

On March 9, 1962, appellant said, "I'm sorry" to Mr. Lin, who was then attending appellant's preliminary hearing (J.A. 7).

Humbert Fernandez took the car from Mr. Lin on March 5, parked it on his parking lot, and gave no one permission to use it (J.A. 8).

Harry A. Anderson saw appellant with Mr. Lin's car on March 5 (the day after the accident involving Mr. Barr's car). Appellant told Anderson that he was using the car (Mr. Lin's) while the insurance company fixed the other. He said Mr. Lin was the insurance agent. Anderson drove with appellant in Mr. Lin's car on March 7 and March 8. On March 8 the car broke down; appellant and Anderson left the car to get assistance, and upon their return, the police were on the scene. The car had been reported as stolen. Anderson and appellant were subsequently taken to the Auto Squad office in the District of Columbia, where Anderson heard appellant state that he had stolen Mr. Lin's car. (J.A. 11–13.)

Barbara Stewart saw appellant driving Mr. Lin's car on March 5 and March 8. Appellant told her the insurance company had let him use the car while the car involved in the accident (Mr. Barr's) was being repaired. (J.A. 16.)

Police Officer William J. Switzer came upon appellant, who was attempting to start Mr. Lin's car, in Maryland on March 8. Appellant said the car was his, and produced Mr. Lin's registration card. Officer Switzer learned from the dispatcher that the car was stolen, and arrested appellant. (J.A. 17–18.)

Police Officer Reid heard appellant confirm Anderson's statement that appellant had driven Mr. Lin's car. He heard appel-

lant state that he had stolen Mr. Lin's car from a parking lot on 13th and H Streets on March 5. He heard appellant apologize to Mr. Lin on March 9. Officer Reid received a claim from Mr. Barr for property found in Mr. Lin's car. (J.A. 19–23.)

STATUTES INVOLVED

Title 18, United States Code, Section 2312, provides:

> Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned for not more than five years, or both.

Title 22, District of Columbia Code, Section 2204, provides:

> Any person who, without the consent of the owner, shall take, use, operate, or remove, or cause to be taken, used, operated, or removed from a garage, stable, or other building, or from any place or locality on a public or private highway, park, parkway, street, lot, field, inclosure, or space, an automobile or motor vehicle, and operate or drive or cause the same to be operated or driven for his own profit, use, or purpose shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding five years, or both such fine and imprisonment.

SUMMARY OF ARGUMENT

There was ample evidence of appellant's guilt, independent of his confession, to justify his conviction. A fortiori, his confession was corroborated. His unsatisfactorily explained possession of the recently stolen automobiles in itself justified his conviction, and accordingly, corroborated his confession.

ARGUMENT

Appellant's confession was corroborated

Opper v. *United States*, 348 U.S. 84 (1954), requires corroboration of confessions. Corroboration consists of evidence, independent of the confession, which tends to establish its trustworthiness. *Id.* at 93. Each element of the crime con-

fessed to need not individually be corroborated by independent evidence. Rather, such evidence must tend to show that the statement—the recitation of the events and actions establishing guilt—was the voluntary and purposeful act of the confesser. See *Smith* v. *United States*, 348 U.S. 147, 153 (1948); *Warszower* v. *United States*, 312 U.S. 342, 347 (1941); *Daeche* v. *United States*, 250 Fed. 566 (2d Cir. 1918). In other words, the inquiry is whether or not there is a factual basis for believing the confesser's narrative to be a true statement of events.

The requirements of *Opper* were more than satisfied in the instant case: Mr. Barr's car is stolen in Washington. Appellant drives it on the day of the theft, and for several days thereafter, until it is involved in an accident in Maryland. He tells friends he is buying the car on time from a Washington automobile dealer. Mr. Lin's car is stolen in Washington. Appellant drives the car on the day of the theft. He explains to friends that an insurance company is letting him use the car, and that Mr. Lin is the insurance man. He drives the car until he is arrested with it in Maryland. Mr. Barr's belongings are found in Mr. Lin's car. Upon arrest, appellant confesses to the theft of the cars.

In view of the foregoing, it simply cannot be said that appellant was convicted solely "from his own mouth" (Appellant's Brief, p. 10). Moreover, it cannot be said that his guilty knowledge (that the cars were stolen property) was not established independent of his confession, even if such were a requirement of the law.[1] Indeed, appellant's fabrications to his friends Mr. Anderson and Miss Stewart as to how he acquired the cars in themselves amply demonstrate his guilty knowledge.[2]

---

[1] We by no means agree that any or all specific elements of the offense must be established independent of the confession.

[2] Unsatisfactorily explained possession of recently stolen property, without more, is sufficient corroboration of a confession to car theft and to unlawful interstate transportation of a stolen car. See *Bray* v. *United States*, — U.S. App. D.C. —, 306 F. 2d 743 (1962); *United States* v. *Borda*, 285 F. 2d 405 (4th Cir. 1961); *United States* v. *Angel*, 201 F. 2d 531 (7th Cir. 1953).

CONCLUSION

Wherefore, it is respectfully submitted the judgment of the District Court be affirmed.

DAVID C. ACHESON,
United States Attorney.
FRANK Q. NEBEKER,
BARRY SIDMAN,
Assistant United States Attorneys.

U.S. GOVERNMENT PRINTING OFFICE: 1965

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,280

HENRY L. JONES,

Appellant,

v.

THE UNITED STATES OF AMERICA,

Appellee

Appeal from the United States District Court
For the District of Columbia

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JOINT APPENDIX

[Filed March 26, 1962]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on March 6, 1962

THE UNITED STATES OF AMERICA)
)
v.) Criminal No. 252-62
) Grand Jury No. 266-62
HENRY L. JONES) Violation: 22 D.C.C. 2204
(Unauthorized Use of Vehicle)

The Grand Jury charges:

Commencing on or about February 19, 1962, and continuing to on or about March 4, 1962, within the District of Columbia, Henry L. Jones feloniously did take, use, operate and remove one certain automobile, property of National Truck Rental Co., Inc., a body corporate, and in the custody of William G. Barr and Jack Shires, from a certain garage, and did operate and drive said automobile, for his own profit, use, and purpose, without the consent of National Truck Rental Co., Inc., a body corporate, the owner of said automobile, and without the consent of William G. Barr and Jack Shires.

SECOND COUNT:

On or about March 4, 1962, Henry L. Jones transported in interstate commerce from the District of Columbia to the State of Maryland, a certain motor vehicle, property of National Truck Rental Co., Inc., well knowing that the said motor vehicle had been theretofore stolen.

THIRD COUNT:

Commencing on or about March 5, 1962, and continuing to on or about March 8, 1962, within the District of Columbia, Henry L. Jones feloniously did take, use, operate and remove one certain automobile, property of Chiang C. Lin, and in the custody of Humbert Fernandez, from a certain lot, and did operate and drive said automobile, for his own profit, use, and purpose, without the consent of Chiang C. Lin, the owner of said automobile, and without the consent of Humbert Fernandez.

FOURTH COUNT:

On or about March 8, 1962, Henry L. Jones transported in interstate commerce from the District of Columbia to the State of Maryland, a certain motor vehicle, property of Chiang C. Lin, well knowing that the said motor vehicle had been theretofore stolen.

/s/ David C. Acheson
Attorney of the United States in
and for the District of Columbia

* * *

[Filed March 30, 1962]

PLEA OF DEFENDANT

On this 30th day of March, 1962, the defendant Henry L. Jones, appearing in proper person and requests counsel be appointed by the Court, which is so ordered, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The defendant is remanded to the District Jail.

By direction of
MATTHEW F. MCGUIRE
Presiding Judge
Criminal Court # Assignment

* * *

* * *

EXCERPTS OF TRANSCRIPT OF PROCEEDINGS

[Filed September 17, 1962]

Washington, D.C.
Tuesday, May 1, 1962

The above-entitled cause came on for trial before HONORABLE DAVID A. PINE, United States District Judge, and a jury, at 3:00 o'clock p.m.

* * * * *

WILLIAM G. BARR

was called as a witness on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLAKEY:

Q. Would you state your name, please? A. William G. Barr.

Q. And your address? A. 2020 F Street, Northwest, Washington, D.C.

Q. Mr. Barr, with whom are you employed? A. The National Parking Association, Incorporated.

* * * * *

Q. Directing your attention to February 19, 1962, were you on that date driving a 1961 beige Chevrolet? A. Yes.

Q. Bearing Maryland license tags AN-5438, having a serial number of 11839B-126481, which had been rented from the National Truck Rental Company? A. That is the license number, and it was rented. We rented it from the National Truck Rental Company, and that was the serial number.

Q. On the morning of February 19, Mr. Barr, were you driving the car? A. Yes, I was.

Q. Did you park it any place? A. Yes, I did.

Q. Would you tell the court and jury where you parked it?

A. 719 - 13th Street, Northwest.

Q. With whom did you leave the car at 719 - 13th Street, Northwest? A. That is a parking garage, and I left it in the custody of Mr. Jack Shires, who is the manager of that garage.

* * * * *

Q. Approximately what time did you leave your car at the garage?
A. Between 9 and 9:30 a.m.

Q. Is this garage located in the District of Columbia? A. Yes, it is.

Q. Did you subsequently return for your car? A. Yes, at approximately 11 a.m. on that same day.

Q. And what happened at that time, if anything? A. At that time I discovered that the car was gone from the garage.

* * * * *

Q. Mr. Barr, had you left any personal property in the car?
A. Yes, I had.

Q. Would you describe that property to the Court and the jury,
10 please? A. Suitcase with a considerable amount of clothing and personal contents that I had planned to take with me on my trip. A new woman's coat and slack suit, a bowling ball in case, and bowling shoes.

Q. Was your car subsequently recovered? A. Yes, sir, it was.

Q. Did you recover your personal property at that time?
A. Partially.

* * * * *

11 Q. Did you receive a call from the Police Department? A. Yes, I did.

THE COURT: On March 14?

THE WITNESS: I believe, sir. I am not sure of the date.

THE COURT: All right.

BY MR. BLAKEY:

Q. Pursuant to that call what did you do? A. I proceeded to the auto squad and identified the property.

Q. What did you do then? A. I left.

Q. Did you take your personal property with you? A. No; I took the personal property on March 21.

Q. Mr. Barr, at any time did you give anyone other than a parking lot attendant permission to use your car? A. No, I did not.

Q. Specifically, Mr. Barr, did you give Henry L. Jones permission to use that car? A. No, I did not.

* * * * *

12 JACK SHIRES

was called as a witness on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLAKEY:

Q. Would you state your name, please? A. Jack Shires.

Q. And what is your address, Mr. Shires? A. 3424 - 11th Place, Southeast.

13 Q. Are you employed, Mr. Shires? A. Yes, sir.

Q. With whom are you employed? A. Parking Management, Incorporated.

* * * * *

Q. Directing your attention to the morning of February 19, did you see Mr. Barr? A. Yes, sir.

Q. Would you tell the court and jury the circumstances under which you saw him? A. He brought his car in on the parking lot.

Q. Did you subsequently see the car taken from the lot? A. I was on the opposite end of 13th Street, and all I could see was the top of the car.

Q. Could you see the individual who took the car from the lot?

14 A. No, sir.

Q. Did Mr. Barr subsequently return for his car? A. Yes, sir, he did.

Q. And what happened at that time? A. He asked me where his car was at. I told him I thought he had taken it.

Q. Were the police notified that the car was absent? A. Yes, sir. I called them.

Q. Mr. Shires, did you at any time give anyone permission to use the car? A. No, sir.

Q. Specifically, Mr. Shires, did you at any time give Henry Lee Jones permission to use the car? A. No, sir.

* * * * *

CHIANG C. LIN

was called as a witness on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

BY MR. BLAKEY:

Q. Would you state your name, please? A. Chiang C. Lin.

Q. And your address? A. 908 Varney Street, Southeast.

Q. Are you employed, Mr. Lin? A. Yes; I work for the United States Government.

* * * * *

Q. Do you own a car, Mr. Lin? A. Yes.

Q. Would you describe to the Court and jury the car that you own? A. '61 white Chevrolet.

Q. What license plate does it bear? A. SB-925.

Q. From what State is the license plate issued? A. Washington, D.C.

Q. Do you mean by that the District of Columbia? A. Yes.

Q. Do you know the serial number for your car?

16 A. 11739B-2115413673.

THE COURT: Say that again.

THE WITNESS: 11739B-2115413673.

BY MR. BLAKEY:

Q. Directing your attention to March 5, 1962, were you driving your car that morning? A. Yes.

Q. Where did you drive it to? A. From my home. I drove my car from my home to the parking lot.

Q. Where is the parking lot located? A. At the corner of H and 13th Streets.

* * * * *

THE COURT: H and 13th?

THE WITNESS: Yes. Mr. Fernandez's parking lot.

BY MR. BLAKEY:

Q. To whom did you turn the car over at that time?

A. Mr. Fernandez.

* * * * *

17 Q. When you left your office that evening did you return for your car? A. Yes.

Q. What happened at that time? A. Mr. Fernandez told me that my car was stolen.

Q. Mr. Lin, did you give anyone permission to use your car other than Mr. Fernandez? A. No.

Q. Specifically, did you give Henry L. Jones permission to use your car? A. No.

Q. Mr. Lin, did you subsequently recover your car? A. Yes, the ninth; I got my car back the ninth.

THE COURT: On the 9th, did you say?

THE WITNESS: Yes; the 9th. After four days.

BY MR. BLAKEY:

Q. Directing your attention to March 9, 1962, were you present in

18 Court when Henry L. Jones was arraigned? A. Yes.

Q. Did you have any conversation with Mr. Jones at that time?

A. Yes.

Q. Would you state to the Court and the jury what that conversation was, please? A. He apologized to me. He said "I'm sorry."

MR. BLAKEY: The Government has no further questions, Your Honor.

CROSS EXAMINATION

BY MR. CAWOOD:

Q. Mr. Lin, that was all he said, when he said "I'm sorry?" Correct? A. Yes.

* * * * *

19 HUMBERT FERNANDEZ

was called as a witness on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLAKEY:

* * * * *

Q. Where do you work? A. Barlane Parking Lot, 1305 H Street, Fernandez' Parking.

Q. Is this in the District of Columbia? A. Yes, sir.

Q. Do you know Mr. Chiang C. Lin? A. Yes, sir.

20 Q. Directing your attention to March 5, 1962, did you see Mr. Lin on that morning? A. Yes, sir. He parked over there.

Q. Would you tell the Court and jury the circumstances under which you saw him? A. Well, he brought the car to the parking lot I think around noon, I don't remember exactly what time it was, and that is all. He give the car to me, I park him on the lot.

Q. Did Mr. Lin subsequently return for his car?

* * * * *

A. He came back around 5 or 5:30; something like that.

Q. And what happened at that time? A. The car was not there.

Q. Mr. Fernandez, did you give anyone permission to use the car? A. No, sir.

Q. Specifically, did you give Henry L. Jones permission to use the car? A. No, sir.

* * * * *

21 HARRY ASHLAND ANDERSON

was called as a witness on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLAKEY:

Q. Would you state your name, please? A. Harry Ashland Anderson.

Q. Would you state your age, please? A. Sixteen.

Q. What is your address? A. 914 - 48th Street, Northeast, Apartment 3.

* * * * *

Q. Do you know a Henry Lee Jones? A. Yes, sir.

22 Q. Would you look around the Court Room and see if he is present today? A. Yes, sir, he is here.

Q. Would you point him out, please? A. The defendant sitting over there (indicating).

THE COURT: How is he dressed?

THE WITNESS: Green, band-like shirt.

THE COURT: Very well.

MR. BLAKEY: I request that the record reflect the witness identifies the defendant.

THE COURT: Very well.

BY MR. BLAKEY:

* * * * *

Q. Directing your attention to the period around February 19, 1961, did you see Mr. Jones around that time? A. Yes, sir.

Q. Was he at that time driving a car? A. Yes, sir.

Q. Would you describe to the Court and jury that car? A. It was

23 a '61 brown Chevrolet.

* * * * *

Q. Would you tell the Court and jury if that car had license plates? A. Yes, sir; it had Maryland tags on it?

Q. Do you recall the number? A. No, sir.

Q. What if anything did Mr. Jones tell you about the car, sir? A. He said he was buying it from Mandel Chevrolet Company.

Q. Did he tell you how he was paying for it? A. Paying $45 a

24 week -- $45 a month.

* * * * *

Q. Where do you work? A. Arlington Minute Man Car Wash.

* * * * *

Q. Do you know of your own knowledge where Mr. Jones works, if he works at all? A. Yes, sir; he worked there.

* * * * *

Q. Where is this car wash located? A. On Wilson Boulevard in Arlington, Virginia.

Q. How were you getting to work in February of 1961? A. I rode a bus most of the time, and he took me out there about two or three times.

* * * * *

25 Q. Did he drive you out there in a 1961 Chevrolet? A. Yes, sir.

* * * * *

Q. Mr. Jones, did you ever go with -- excuse me. Mr. Anderson, did you ever go with Mr. Jones to Mitchellville, Maryland? A. Yes, sir.

Q. Would you tell us where you went in Mitchelville, Maryland?

26 A. Down Woodmore Road and turned off by George Palmer Highway and Enterprise Road with Woodmore Road, turned up another road and went up to Barbara Stewart's house.

Q. Would you tell us who Barbara Stewart is, please? A. His girl friend.

* * * * *

Q. Directing your attention once again to March 4, 1962, did you go to Miss Stewart's house that day? A. Yes, sir.

Q. Did you subsequently leave her home? A. Yes, sir; we left.

Q. Who were you with at that time? A. Henry Jones and Barbara Stewart.

Q. Were you in a car? A. Yes, sir.

Q. Will you tell us what car you were in? A. 1961 brown Chevrolet.

Q. Is this the same Chevrolet that you previously referred to? A. Yes, sir.

Q. On the way home what, if anything, happened? A. First we

27 went up to this girl's house named Ruby, and then we was coming

back, she wasn't at home so we were coming back, and this other car was in the middle of the road so to keep from hitting each other Henry turned to the right and this other car turned to the right, and they didn't hit each other. Henry's car started sliding, I guess it got out of control, and went into a fence.

Q. What happened after the accident? A. We went up a hill and then he started to go back through the fence, and he changed his mind and went to another place, went through another part of the fence, and went down the hill and ran the car into the shoulder of the road, the front end.

* * * * *

Q. Directing your attention to March 5, 1962, did you see Mr. Jones on that day? A. Yes, sir.

Q. Was he driving a car at that time? A. Not when I first saw him.

Q. When you saw him the second time was he driving a car then? A. Yes, sir.

Q. Would you describe to the Court and the jury that car? A. It was a 1961 Chevrolet, white.

THE COURT: '51?

THE WITNESS: '61.

BY MR. BLAKEY:

Q. Would you tell us what license plates that car bore? A. District of Columbia.

Q. Do you recall the number? A. No, sir.

Q. Would you tell the Court and jury what if anything Mr. Jones told you about that car? A. He told me that he was using it until the insurance company fixed his. That Mr. Lin was the insurance agent, or something.

Q. Would you tell us who Mr. Lin was, please? A. Mr. Lin was the insurance agent, or something.

* * * * *

29 Q. Directing your attention to March 7, 1962, did you see Mr. Jones that day? A. Yes, sir.

Q. Was he driving a car? A. Yes, sir.

Q. Would you tell the Court and jury what car it was?

A. A 1961 Chevrolet, white.

Q. Is this the same car you previously referred to? A. Yes, sir.

Q. Where, if any place, did you go with him at that time?

A. We went to Mitchellville, Maryland.

30 Q. From where did you come? A. Washington, D.C.

Q. Directing your attention once again -- directing your attention to March 8, 1962, did you see the defendant on that day?

* * * * *

THE WITNESS: Yes, sir, I saw him.

BY MR. BLAKEY:

Q. Was he driving a car that day? A. Yes, sir.

Q. Can you tell us what car he was driving? A. 1961 Chevrolet, white.

Q. Is this the same Chevrolet that you previously referred to? A. Yes.

Q. Where did you go on March 8, 1962? A. To Mitchellville, Maryland.

Q. Why did you go to Mitchellville, Maryland? A. Went down to see Barbara Stewart.

Q. Did you subsequently return from her house? A. Yes, we

31 returned.

Q. What if anything happened while you were returning? A. Well, the car broke down on the way down there, so we pushed it up into a man's driveway, and then we went down to her house and we came back, with her father and nephew, and they were going to use jump cables on the batteries to start the car.

Q. What happened at that time? A. By that time the police were down there.

* * * * *

Q. Where were you at that time? A. In Mitchellville, Maryland.

Q. Could you tell me what highway you were on? A. Woodmore Road.

Q. When you say the police pulled up, would you tell me what kind of police pulled up? A. Maryland police.

Q. And what happened after the police pulled up? A. They asked whose car it was.

Q. Pardon me, who did they ask whose car it was? A. I don't know that they directed the question to any one person.

Q. Did Mr. Jones at that time say anything? A. Yes, sir.

32 Q. Would you tell the Court and jury what he said? A. He said that it was his car.

Q. Did the police ask anything else? A. Yes, sir; they asked about the registration card and permit.

Q. And what if anything did Mr. Jones do at that time? A. He showed them a permit and was looking for the registration card.

Q. And what happened next? A. Well, the police found the temporary registration card and he told him that he had that, and then he told him that the car had been reported stolen.

Q. And what happened then? A. Jones, he looked at him like the man was crazy.

* * * * *

33 Q. Were you subsequently taken to the auto squad in the District of Columbia? A. Yes, sir.

Q. With whom did you go to the auto squad? A. My mother and father.

Q. When you were present at the auto squad would you tell us what if anything occurred at that time? A. Henry Jones said he had stolen the cars.

Q. Specifically, did he say that he had stolen the brown Chevrolet, a 1961? A. Yes, sir.

Q. Did he also say that he had stolen the white 1961 Chevrolet? A. Yes, sir.

* * * * *

36 Washington, D. C.
Wednesday, May 2, 1962

* * * * *

38 BARBARA STEWART

was called as a witness on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLAKEY:

Q. Would you state your name, please? A. My name is Barbara Stewart.

Q. How old are you, Miss Stewart? A. Seventeen.

Q. What is your address? A. Route 1, Box 1066, Mitchellville, Maryland.

Q. Miss Stewart, do you know a Henry L. Jones? A. Yes.

Q. Would you look around the court room? Is he present here today? A. Yes.

Q. Would you point him out, please? A. He is the boy over there in the green sweater.

39 THE COURT: With the what sweater?

THE WITNESS: Green.

MR. BLAKEY: I request the record reflect the witness has identified the defendant.

THE COURT: Yes.

* * * * *

42 Q. Miss Stewart, directing your attention to the period around February 19, 1961, did you see Mr. Jones at that time? A. Yes.

Q. Was he at that time driving a car? A. Yes.

Q. Would you describe that car to the Court and jury, please? A. It was a '61 brown -- beige Chevrolet.

* * * * *

Q. What if anything did Mr. Jones tell you about that car? A. He said he was buying the car from Ourisman Mandel.

Q. Did he tell you how much he was paying for it? A. He said he
43 was going to pay $45 a month.

Q. Miss Stewart, did you observe in and about that car a bowling bag, bowling shoes, suitcase, or ladies' coat and suit? A. Yes.

Q. Would you describe to the Court and jury the circumstances under which you observed these articles? A. I saw them when he opened the trunk.

Q. Did he at that time tell you anything about these articles? A. Well, he said they was in the car, that the car had previously belonged to a lady and that the dealer that he was buying the car from said that he couldn't get ---

* * * * *

44 A. He said that the car had previously belonged to a lady and that the dealer couldn't get in touch with the lady and that he had to give the things away in the car.

* * * * *

THE WITNESS: He said that the car had previously belonged to a lady and that the things in the car, the dealer had told hir. to give them away.

* * * * *

BY MR. BLAKEY:

Q. Miss Stewart, in the period from February 19, 1962, to on or about March 4, 1962, did Henry L. Jones ever visit you driving this car that you described? A. Yes.

Q. Directing your attention to Sunday, March 4, 1962, did you see Mr. Jones on that day? A. Yes.

Q. Was he on that day driving a car? A. Yes.

45 Q. Was that car the same car that we have previously spoken of? A. Yes.

Q. Who if anybody was he with at that time? A. Harry Anderson was with him.

Q. What if anything did you do with Mr. Jones and Mr. Anderson on that day? A. We went down to a friend's house.

Q. Did you subsequently return from your friend's house?

A. On the way back there was an accident.

Q. Would you describe that accident to the Court and jury, please?

A. Well, we was coming around this curve and a car was coming around in the middle of the road, and he ducked the car and went over on the gravel and the car went out of control and went into this field, and he started to come back out the way he went in, but it went down over this hill.

Q. When you say "he", Miss Stewart, do you mean Mr. Jones?

A. Yes.

Q. Was he at this time driving the car? A. Yes.

* * * * *

46 Q. When did you next see Mr. Jones, if you saw him subsequently?

A. The Monday after the accident.

Q. Was he at that time driving the car? A. Yes.

Q. Would you describe that car to the Court and Jury please?

A. It was a '61 white Chevrolet.

Q. Did the car have license tags? A. Yes.

Q. Would you tell us what state the tags was from? A. District of Columbia.

Q. What if anything did Mr. Jones tell you about this car?

A. He said it was the car that the insurance company loaned him until they would fix his.

47 Q. Did you from the period March 5 to about March 8, 1962, see Mr. Jones again? A. Yes.

Q. Was he at that time driving a car? A. Yes.

Q. Is this the same car that we have spoken about, the white four-door Chevrolet? A. Yes.

Q. Directing your attention to March 8, 1962, did you see Mr. Jones on that day? A. That night.

Q. And what happened at that time? A. Well, Mr. Jones and Harry caught a ride over to my house with my next-door neighbors and they said that the

battery had gone dead on the car and they waited until my father and nephew came to take them over there to use the jumper cables on the car.

Q. Did you return with him to the car? A. No; but one of the ends was missing, and before they could get the car started the policemen came.

* * * * *

CROSS EXAMINATION

BY MR. CAWOOD:

Q. Miss Stewart, the defendant told you that the car was his; is that correct? A. Yes.

* * * * *

WILLIAM J. SWITZER

was called as a witness on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLAKEY:

Q. Would you state your name, please? A. Officer William J. Switzer, Prince George's County Police.

49 * * * * *

Q. Directing your attention to the evening of March 8, 1962, did you at that time receive a call from your dispatcher? A. Yes, sir, I did.

Q. Pursuant to that call what did you do? A. I immediately left the area that I was in and went to the area where the dispatcher was, and there was a car sitting in the road --

* * * * *

Q. About what time did you arrive on the scene? A. About 10:40.

Q. What if anything did you find at that time? A. I found a 1961

50 Chevrolet with District of Columbia tags on it, that is, last year's tags, SV-925, sitting in the roadway with the lights out.

Q. What was the color of the car, officer? A. White.

* * * * *

Q. Were there any individuals standing around the car? A. Yes,

sir, there was. There was another vehicle nosed into it with two jumper cables on it.

Q. How many individuals were standing around the car? A. Five.

Q. Would you look around the court room? Do you see here today one of those individuals? A. Yes, sir.

Q. Would you point him out, please, and describe him to the Court and jury? A. The colored fellow sitting over there with a green sweater on.

Q. Did you subsequently learn his name? A. Yes, I did.

Q. What was that name? A. Henry Jones.

51 MR. BLAKEY: I request that the record reflect the identification of the witness.

THE COURT: Yes.

BY MR. BLAKEY:

Q. At that time did you have a conversation with Mr. Jones? A. Yes.

Q. Would you tell the Court and jury the subject matter of the conversation? A. When I rode up to this vehicle which was parked on Woodmoore Road I observed the defendant and four other subjects there. The car was sitting in the road with the lights out and I asked what the trouble was. The defendant said that he had a dead battery. I asked him was it his car, and he said "yes". So I checked out to see whether it was his. I asked for his registration card, and he handed me a card with a "Chiang C. Lin", L-i-n, on it. By the nature of the name I kind of figured that it wasn't listed to him.

Q. What did you do then? A. I had my partner check with the dispatcher.

Q. As a result of the information the dispatcher forwarded to you, what did you do? A. I told him that the vehicle was stolen, and that I was going to place him under arrest.

* * * * *

53 Q. Officer, did all if this occur in Maryland? A. It all happened in Mitchellville, Prince George's County, Maryland.

* * * * *

DELMAR F. REID

was called as a witness on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLAKEY:

Q. Would you state your name, please? A. Detective Sergeant Delmar F. Reid, assigned to the Auto Squad, Metropolitan Police, Washington, D. C.

Q. Officer, directing your attention to March 9, 1961, were two individuals turned over to you by the Prince George's County Police?

54 A. Yes, sir.

Q. Would you tell the Court and jury their names? A. The defendant here, Jones, sitting with his counsel. The other one was a youngster by the name of Anderson. A juvenile.

* * * * *

Q. Did you recall a call -- did your office - did there come a time when you went to Prince George's County? A. Yes, there did.

55 Q. When you arrived at Prince George's County, what did you do? A. I would like to correct that. I went to Upper Marlboro, Maryland, which is in Prince George's County.

Q. When you arrived at Upper Marlboro what did you do? A. I went into the Sheriff's office at which time the defendant here at the bar had signed waiver of extradition, as well as the juvenile Anderson, which was turned over by the Sheriff's office to me. The parents of Anderson was also present and the parents of Anderson brought him back to the District of Columbia, and we returned the defendant Jones.

Q. At what time did you pick up Jones? A. At 11 a.m. he was turned over to me.

Q. And where did you take him? A. From there to the automobile squad officer here in Washington, D. C.

* * * * *

Q. Approximately what time did you arrive back at the office?

56 A. At 11:30 a.m.

Q. What happened at that time? A. At 11:45 a.m. Anderson and his parents came into the auto squad office, at which time Anderson was confronted with the defendant Jones.

* * * * *

58 Q. Officer Reid, would you tell the Court and jury what Harry Anderson said at that time in the presence of Henry L. Jones?

A. Yes, sir. At 11:45 a.m. on March 9th Anderson was confronted with the defendant here Jones, at which time he related a story as to how he had met Jones approximately two or three months prior, they were working together in a wash rack in Virginia, and when he first met the defendant he was driving at that time a Plymouth. He believed it was a '56--

MR. CAWOOD: Objection, Your Honor.

THE COURT: Just relate it down to events after February 19.

THE WITNESS: All right, Your Honor.

THE COURT: What did he say as to what happened -

BY MR. BLAKEY:

Q. Would you confine your remarks, officer, please, to the beige 1961 Chevrolet and the white 1961 Chevrolet, and the events which occurred after February 19, 1962? A. I will.

On or about February 19 Anderson stated that he was riding with Jones in a 1961 beige Chevrolet sedan that bore Maryland tags. He did not know the particular tag number, but he said this car was the same car that he was involved in an accident in Maryland somewhere around the Forestville area, or Forestville Heights, in that particular area. And this accident occurred somewhere around about March 4 of 1962.

He said that there was also either one or two young ladies in the particular car, and that Anderson had received the bump that is on his head, or the scar from it from this accident. And then on March 5th of 1962 Jones came to his house wanting him to file some sort of insurance papers if he had been injured in this particular accident. At this particular

time he was driving a 1961 white Chevrolet sedan that bore DC tags, but he did not know the tag number. However, he said this was the car that they were arrested in by the Maryland police in Maryland.

He said that he was advised by Jones that the other car, being wrecked, the insurance company was fixing the car and had loaned him this particular 1961 Chevrolet to use while his other car was being repaired.

And I asked the defendant Jones here ---

Q. As a result of this statement, did the defendant Jones at that time say anything? A. Yes, he did.

Q. Would you tell the Court and jury what he said at that time? A. I asked the defendant Jones how about this story that Anderson just

60 related, how true was it? He stated to me that the story that Anderson was telling was true; that --

Q. Was anyone else present at this time?

THE COURT: Let him finish his statement.

True and what?

THE WITNESS: And that he had stolen the Chevrolet in question, the 1961 beige Chevrolet, from a parking lot around 13th and G Streets, Northwest, and that the second Chevrolet, the 1961 white Chevrolet sedan, he had taken this from a parking lot, from 13th and H, as in "Henry" Northwest, and he had been to work the day prior, the day of March 5th, that is, and on his return trip from Virginia by bus, as he says, he stopped by this parking lot at 13th and H and took the white Chevrolet.

* * * * *

Q. Subsequent to this statement was Henry L. Jones arraigned? A. He was.

Q. At approximately what time was he arraigned? A. He was arraigned in front of the United States Commissioner at 1 p.m. March 9th.

61 He waived ---

Q. Did there come a time at the arraignment when you confronted Jones with Chiang C. Lin? A. Yes, there did.

Q. Did the defendant Jones at that time make any statement?

A. Yes, he did.

Q. Would you relate to the Court and jury what that statement was?

A. At 1:15 p.m. on March 9th, in the cell block there at the United States Commissioner's office, the defendant Jones apologized to Mr. Lin, the complainant in the 1961 Chevrolet sedan case, that he was sorry that he stole his automobile, and that the story that he had related prior was still true to the best of his knowledge.

* * * * *

62 Q. Now, are you familiar with the circumstances under which the white 1961 Chevrolet was recovered, of your own personal knowledge?

A. Yes, sir.

Q. Do you know of your own personal knowledge whether personal property was recovered from that car? A. Yes, sir.

Q. Would you tell the Court and jury what that property was?

A. Yes, sir.

A. Yes, sir.

On the 14th of March Mr. Lin, the complainant in a white 1961 Chevrolet, advised me that he --

Q. Just a second, officer. Without testifying as to what Mr. Lin said, would you tell the court and jury what Mr. Lin said, would you tell

63 the court and jury what Mr. Lin did and what you know as a matter of fact of your own personal knowledge that he did? A. Mr. Lin called the phone and I responded to 1305 H Street, Northwest, which is a parking lot, there meeting Mr. Lin, where I observed a 1961 Chevrolet, the same one reported stolen by the complainant. He opened the trunk of his car and in the trunk of the automobile was a suitcase with the initials of "WGB" on same, containing men's and ladies' wearing apparel. This property later was identified ---

THE COURT: Now, wait.

BY MR. BLAKEY:

Q. At a subsequent time, officer, did you take the property at that time? A. I did.

Q. Was that property subsequently claimed from you? A. It was.

Q. By whom was that property claimed? A. Mr. Barr.

MR. BLAKEY: No further questions, Your Honor.

CROSS EXAMINATION

BY MR. CAWOOD:

* * * * *

64 Q. Referring to testimony of what Mr. Jones said to Mr. Lin at the arraignment, do you remember Mr. Jones' exact words? A. Exact words?

Q. Exact words. A. I don't think I could recall the exact words, no, sir.

* * * * *

86 MR. CAWOOD: Your Honor, I wish to make a motion for judgment of acquittal and I wish to base it following grounds:

87 I believe that we have put into evidence an explanation of why the car was taken and why Henry Jones was in the car. I believe, in accordance with Fort versus United States, that except the defendant's own admissions and confessions there has been no corroborating evidence to corroborate the element of intent or scienter which is obviously involved in this crime.

That is the motion I make at this time.

THE COURT: Denied.

* * * * *

CHARGE TO THE JURY

88 THE COURT: Members of the jury, at this stage of the case it is the Court's duty and obligation to charge the jury, which means to give the jury the principles of law applicable to this case. The jury is required to follow the law as the Judge gives it to you.

The jury, on the other hand, has a coordinate responsibility of finding the facts and, after the facts have been found, to apply the law as the Judge gives it to the jury, and reach a correct verdict.

In other words, the Judge is the exclusive judge of the law, and the jury is the exclusive judge of the facts. Between us we constitute the court.

You are the sole judges of the facts, I am the sole judge of the law.

Now, in finding the facts you are limited to one source only, namely, the evidence and inferences reasonably deducible from the evidence. The evidence consists of what you have heard from the lips of witnesses who have appeared before you, and nothing else. You are not permitted to guess or speculate or conjecture. However, you should apply your experiences in life when you weigh and evalute the testimony, and you should not put aside your common sense when you weigh and evaluate the testimony because, being the sole judges of the facts, you are of necessity the sole judges of the credibility of the witnesses, that is, the amount of credibility which you will give to the testimony of each
89 of the witnesses who have appeared before you. And in determining credibility you will take into consideration the manner and demeanor and conduct of the witnesses as they testified, their memory or their lack of memory, their capacity to express to you through the medium of words what they have seen or heard, their ability or lack of ability to see or hear the things about which they testify, any bias or prejudice shown by any of the witnesses which may have colored their testimony, and any interest in the outcome of the case which may have perverted their testimony and made it untrustworthy.

Now, when you start your deliberations and during your deliberations you will not let bias or prejudice or emotion of any kind influence you. You will be fair and impartial, bearing in mind that you are the fact-finders, and as fact-finders you must perform your task objectively, unemotionally, and detachedly.

Now, the defendant has not taken the witness stand. The fact that he did not take the witness stand raises no presumption of any kind against him. That was his right, and you should not in your thinking or in your deliberations or in your verdict consider in any way the fact that he did not take the witness stand because, as I say, it raises no unfavorable inferences against him.

90 Now, this defendant, as all defendants, enters this case clothed with the presumption of innocence. That presumption abides with him

throughout the trial until it has been overcome by evidence which convinces you of guilt beyond a reasonable doubt.

The burden of proof rests upon the government to establish the essential elements of the offenses charged beyond a reasonable doubt, and I shall give you those essential elements before I am through.

Now, what is a reasonable doubt? A reasonable doubt is such a doubt as would cause a juror, after a careful and candid comparison and consideration of the evidence, to be so undecided that he cannot say he has an abiding conviction of the defendant's guilt. It would be such a doubt as would cause a reasonably prudent man to hesitate or pause in graver or more important transactions. However, it is not a fanciful doubt nor a whimsical doubt. The Government is not required to establish guilt to a mathematical certainty or a scientific certainty, or beyond all doubt. Its burden is to establish guilt beyond a reasonable doubt, a doubt for which you can give a reason as I have explained that term to you.

Now, you should give careful consideration to the summations of counsel. They are designed to assist you in marshalling and organizing
91 the facts, but you should bear in mind that each is an advocate of his particular side and consider the summations in the light of that advocacy, and if anything they have said to you is contrary to your recollection so far as the evidence is concerned, it is your recollection that governs, and not theirs, because what they say to you is not evidence.

Now I shall comment on the evidence, not for the purpose of usurping your functions as fact-finders, but for the purpose of perhaps assisting you in understanding what I think are the crucial issues in this case, and in so doing if I make any statement contrary to your recollection it is your recollection that governs, and not mine, because what I say to you is not evidence.

Now, when you go to the jury room you will take with you the indictment. The indictment is not evidence. It is simply a statement of the charges which have been made against the defendant by the Grand Jury after hearing only one side of the case, and you may consider the

indictment only for the purpose of determining what the charges are that have been made against the defendant, and not for any other purpose.

Now, you will note in this case that the indictment is in four counts. Each count in effect is a separate indictment and must be considered by you separately. Each count charges a separate violation of the law.

92 The first and second counts concern an automobile owned by the National Rental Company, Inc., in the custody of William G. Barr and Jack Shires. Barr, you will remember, was the employee of some trade association which rented the cars, and I think Jack Shires was the parking lot attendant.

Am I correct in my recollection on that -- of Shires?

MR. BLAKEY: Yes, Your Honor.

THE COURT: The third and fourth counts relate to an automobile owned by Mr. Chiang in the custody of Mr. Fernandez, the parking lot attendant or owner.

Now, count 1 charges, in brief, the use and operation of the automobile belonging to the National Truck Rental Company, Inc., from a certain garage, and the operation of the same for defendant's own use and purposes without the owner's consent.

The second count in brief charges the interstate transportation of this automobile knowing that the automobile had theretofore been stolen. The third count charges briefly the use and operation of the Chiang automobile from a certain lot and the operation of the same for the defendant's use and profit without the consent of Mr. Chiang. And the fourth count charges briefly the interstate transportation of Mr. Chiang's automobile by the defendant from the District of Columbia to Maryland,

93 well knowing that the automobile had been stolen.

Now, as I view this evidence there is no dispute that the automobile of the National Trucking Rental Company, Inc., and the automobile of Mr. Chiang, were both taken from the place where they had been left, and driven by someone without the owner's consent, and also driven -- each of them was driven in interstate commerce, that is, from the District into Maryland.

There also seems to be, as I view the evidence, little dispute that the defendant actually drove and operated those automobiles. The dispute is whether or not at the time he drove and operated those automobiles he knew that they were stolen and that he did so knowingly. Because, if he did so without knowing they were stolen, he would be innocent. Just as any of you would be, on leaving the court house, if somebody driving by said "Could I give you a lift?" And you said "Yes", and got in the car, and he asked you to drive it awhile and you drove it awhile and then the automobile was stopped by the policemen and it turned out it was stolen. You could not be charged with any offe nse because what you did was done innocently and without knowledge that it was stolen. And that, as I see it, is the principal and crucial issue in this case, and I think that is what counsel for defendant argued principally.

94 Of course, you have the confessions, so-called, or statements of the defendant as set forth by the police and by the other witnesses for the Government.

Now, confessions standing alone are not sufficient to establish guilt unless they are corroborated in some way, substantially corroborated.

The Government takes the position that they are corroborated in this case. The defendant takes the position that they are not, as I understand it.

Now, the essential elements of counts 1 and 3 are as follows as to each count: First, that the defendant took and removed the automobile described in the count from the place described in the indictment; second, that he took it and removed it without the consent of the owner, or custodian. Third, that he drove it for his own use and purpose and, fourth, that he did so knowingly and intentionally, that is, knowing that the automobile was being driven without the owner's consent.

The essential elements of counts 2 and 4 are the following as to each count: First, that the defendant transported the automobile described in the count from the District of Columbia to Maryland; second, that the automobile had been stolen; and third, that the defendant at the time he

transported it, if you find that he did transport it, knew that it was stolen.

95 You will take up each count separately and render your verdict as to each count separately.

If you find that each and all of these elements have been established beyond a reasonable doubt in respect of one or more of the counts, your verdict will be guilty on such count or counts.

If you find that each and all of these essential elements have not been established beyond a reasonable doubt in respect of one or more of the counts, your verdict will be not guilty on such count or counts.

When you go to your jury room you will first select your foreman who will preside over your deliberations. When you have reached your verdict, you will make that fact known to the Marshal, in whose custody you will be. He will inform me that you have reached a verdict, and I shall assemble counsel and receive it. It will be announced by your foreman unless the jury is polled, in which case each of you will be required to announce it.

Your verdict will be either guilty or not guilty on each of the four counts of the indictment. Your verdict must be unanimous.

Any objections? If there are, I will hear them at the bench.

96 (AT THE BENCH:)

MR. BLAKEY: Would Your Honor explain possession of stolen property?

THE COURT: I would think that that is inapplicable to this case because this is not a case involving larceny or housebreaking.

I don't believe that that is a proper instruction for 826(b) or interstate transportation of a vehicle.

MR. BLAKEY: Of stolen motor vehicles?

THE COURT: I don't believe it is. I am afraid that it might be error if I did it.

MR. BLAKEY: Well, we will let it slide, then.

THE COURT: I wish you had suggested it a little earlier. If you had we would have looked it up, but I am a little fearful it does not go that far. It relates to larceny and housebreaking.

You see, 826(b) is not larceny.

MR. BLAKEY: I know, and I understand on the interstate transportation of stolen goods you must prove they were in fact stolen.

THE COURT: Well, you have proved that.

MR. BLAKEY: Right. Only if he is in possession, then they may infer he is a theif. Then if they can do that ---

97 THE COURT: You might read the Forte case that he referred to. It is a very serious case for the Government to overcome.

To overcome it, I thought I would show you the Opper case. You have read that -- a case in the Supreme Court?

MR. CAWOOD: Yes, I have, Your Honor.

THE COURT: That is my authority for not listening further to your argument. You read the Opper case.

MR. CAWOOD: And also my reason for not going further with my argument, Your Honor.

MR. BLAKEY: I won't press the point.

* * * * *

[Filed May 2, 1962]

[VERDICT]

On this 2nd day of May, 1962, came again the parties aforesaid in manner as aforesaid, and the same jury and alternate jurors as aforesaid in this cause, the hearing of which was respited the 1st day of May, 1962; whereupon after the hearing of all the evidence, the arguments of counsel and instructions of the Court, the alternate jurors are discharged and the jury retires to consider their verdict.

The jury returns into Court and upon their oath say that the defendant is not guilty on count 1 and guilty on counts 2, 3 and 4; whereupon each and every juror is asked if that is his or her verdict and each and every juror says that it is; thereupon the jury is discharged.

The case is referred to the Probation Officer of the Court, and the defendant is remanded to the District of Columbia Jail.

By direction of

DAVID A. PINE
Presiding Judge
Criminal Court # Two
* * *

[Filed June 8, 1962]

JUDGMENT AND COMMITMENT

On this 8th day of June, 1962 came the attorney for the government and the defendant appeared in person and by his attorney, James C. Cawood, Jr., Esquire

IT IS ADJUDGED that the defendant has been convicted upon his plea of Not Guilty and a verdict of Guilty of the offense of Section 2204, Title 22 D.C. Code and Section 2312, Title 18 United States Code as charged in Counts Two, Three, and Four and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) year to Three (3) years on Count Two; One (1) year to Three (3) years on Count Three; One (1) year to Four (4) years on Count Four; Said sentence by the counts to run concurrently.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ David A. Pine
United States District Judge.

[Filed June 18, 1962]

ORDER

Let the applicant proceed on appeal without prepayment of costs.

It appearing that all or certain portions of the stenographic transcript of proceedings before this Court will be needed for determination of the appeal, it is this 18th day of June, 1962,

ORDERED, that All, except opening statements and summations of counsel of the stenographic transcript shall be prepared at the expense of the United States.

It is FURTHER ORDERED, that James C. Cawood, Jr., Esquire, 2412 Minn. Ave., S.E. (20), is appointed to represent the applicant on appeal.

/s/ David A. Pine
Judge
